

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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TRUSTEES OF THE LOCAL 7 TILE
INDUSTRY WELFARE FUND, TRUSTEES OF
THE LOCAL 7 TILE INDUSTRY ANNUITY
FUND, TRUSTEES OF THE TILE LAYERS
LOCAL UNION 52 PENSION FUND,
TRUSTEES OF THE BRICKLAYERS &
TROWEL TRADES INTERNATIONAL
PENSION FUND, and TRUSTEES OF THE
INTERNATIONAL MASONRY INSTITUTE,

MEMORANDUM AND ORDER

Case No. 13-CV-2779 (FB) (CLP)

Plaintiffs,

-against-

AMARKO MARBLE & GRANITE CO., INC.
and AM&G STONE SETTING INC.,

Defendants.

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Appearances:

For the Plaintiff:

MICHAEL BAUMAN, ESQ.
Virginia & Ambinder
111 Broadway
New York, NY 10006

BLOCK, Senior District Judge:

On February 7, 2014, Magistrate Judge Cheryl L. Pollak issued a Report and Recommendation ("R&R") recommending that plaintiffs' motion for default judgment be granted and that judgment be entered against both defendants jointly and severally in the amount of \$94,193.54.

The R&R states that "[a]ny objections to this Report and Recommendation must be filed with the Clerk of the Court, with a copy to the undersigned, within fourteen (14) days of receipt of this Report. Failure to file objections within the specified time waives the right to

appeal the District Court's order." R&R at 20. A copy of the R&R was served on defendants at their last known address on February 7, 2014. Because the R&R served on defendant Amarko Marble & Granite Co. was returned undelivered, plaintiffs served a second copy of the R&R on defendant on April 3, 2014, to the address on file with the New York Secretary of State. To date, no objections have been filed.

Where, as here, clear notice has been given of the consequences of failure to object, and there are no objections, the Court may adopt the R & R without *de novo* review. *See Thomas v. Arn*, 474 U.S. 140, 149-50 (1985); *Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) ("Where parties receive clear notice of the consequences, failure timely to object to a magistrate's report and recommendation operates as a waiver of further judicial review of the magistrate's decision."). The Court will excuse the failure to object and conduct *de novo* review if it appears that the magistrate judge may have committed plain error. *See Spence v. Superintendent, Great Meadow Corr. Facility*, 219 F.3d 162, 174 (2d Cir. 2000).

As no error appears on the face of Magistrate Judge Pollak's R&R, the Court adopts it without *de novo* review. However, the Court updates Magistrate Judge Pollak's calculation of post-judgment interest from \$343.40 to \$368.56 as of April 22, 2014. Accordingly, the Court directs the Clerk to enter judgment against defendants, Amarko Marble & Granite Co., Inc. and AM&G Stone Setting Inc., on April 22, 2014, in favor of plaintiffs in the amount of \$94,218.70.

SO ORDERED.

/s/ Frederic Block
FREDERIC BLOCK
Senior United States District Judge

Brooklyn, New York
April 22, 2014